tiative, and this, as a matter of fact, would have placed them in the position of suing themselves. Nor can the corporation be charged with knowledge of the wrongful acts of the directors so that the statute would begin to run from the date of the commission of the wrong. It is a well established rule that mere ignorance of facts alone will not prevent the operation of the statute whether at law or in equity. But if the action is concealed by fraud, or if the facts upon which the action is based are concealed, then the statute of limitations will not begin to run until the discovery of the wrongs, there being no negligence or lack of diligence on the part of the parties aggrieved.[9] Especially is this true in courts of equity. Equity will not allow one to profit by his own wrong. In absence of special statutory exceptions, it is held by some courts that the concealment does not postpone the running of the statute in courts of law.[10] But the weight of authority seems to follow the equitable rule.[11] Modern statutes usually provide when the statute should begin to run in cases of fraud and concealment, and by the single system of pleading in code states this difficulty is somewhat obviated. This rule seems in accord with reason and the principles of justice, and is applied to the liability of the directors of a corporation for a breach of their duties as *quasi*-trustees.[12]

THE CY PRES DOCTRINE AND THE SCOPE OF ITS APPLICATION.—One of the most important functions exercised by courts of chancery, in the administration of charitable trusts, is found in the so-called doctrine of *cy pres*. In their zeal to sustain charitable trusts, the courts which recognize the doctrine have sometimes applied the principle under very questionable circumstances, extending its meaning to include any case in which the original purpose of the donor becomes impracticable. The doctrine of *cy pres* may be stated in general terms as follows: When there is an intent expressed on the part of the donor to devote a gift to charities in

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[9] See Lewey *v.* Fricke Coke Co., 166 Pa. St. 536, 31 Atl. 261, 45 Am. St. Rep. 684, 28 L. R. A. 283; 2 POMEROY EQ. JUR., 3 ed., § 917 and note.

[10] For an excellent discussion of this subject, showing the conflict of the authorities and the law in Virginia, see Rowe *v.* Bentley, 29 Gratt. 756. In the course of the opinion Burks, J. said: "In the cases of fraud the authorities are conflicting, as to whether at law the statute begins to run from the commission of the fraud, or from its discovery * * *. In equity, however, it would seem to be well settled that the statute begins to run only from the discovery of the fraud * * *." See also, Rice *v.* White, 4 Leigh 474; Fant *v.* Fant, 17 Gratt. 14.

[11] See Cook *v.* Chicago, etc., R. Co., 81 Iowa 551, 46 N. W. 1080, 25 Am. St. Rep. 512, 9 L. R. A. 764; Hughes *v.* Waynesburg First Nat. Bank, 110 Pa. St. 428, 1 Atl. 417.

[12] See Brinckerhoff *v.* Roosevelt, 143 Fed. 478. In Ventress *v.* Wallace, *supra*, though not necessary to decide the case, it was said: "We think the ruling that the statute of limitations does not begin to run in favor of a director in a case of this kind until he surrenders his office is the more reasonable and supported by better authority."

general, and no particular object is mentioned, or the original object for any reason fails or does not exhaust the fund, the court will execute the trust *cy pres,* and apply the funds to such charitable objects as most nearly resemble or accord with those selected by the donor.[1]

Before the doctrine can properly be applied, the courts concede that there must be a real necessity for its application, and it must appear that a strict adherence to the original plan, as specified by the donor, will in reality defeat or materially impair his general charitable purpose.[2] In addition to this, a general charitable intent (as it is sometimes called) must have been manifested by the donor—an intention to devote the gift, once and for all, to charitable purposes. If it appear that the donor intended to confine his benevolence to some definite and specific charity designated by him, then, if that object fails, a trust for the surplus results to the donor, or to his estate, and there is no room for the doctrine of *cy pres.*[3] On the other hand, if the donor has declared his intention in favor of charities generally, without any specification of particular objects, or in favor of definite objects which fail, from whatever cause—even though in such case the particular mode of operation contemplated by the donor is uncertain or impracticable—yet the general purpose being charitable, such purpose will be given effect under the doctrine of *cy pres,*[4] notwithstanding the indefiniteness or failure of its immediate objects. The *presumed intent* of the donor is the guiding principle, and in fact the consummation of the donor's intention is the reason for the rule of *cy pres,* and should in all cases govern its application.[5]

But in the American courts this rule must be taken with certain important limitations; and, for reasons which will appear, the doctrine of *cy pres* has had a much more restricted application in this country than in England. From time immemorial the courts of chancery in England have exercised two functions in respect to the administration of charitable trusts. One is a judicial function which is a part of its regular jurisdiction as a court of equity; the other is one exercised by the chancellor in behalf of the king, under his sign manual, as *parens patriae.* As *parens patriae,* the king assumed and exercised the prerogative to apply a charitable gift, where the original purpose of the donor for any reason failed, to such purposes as he saw fit, without regard to the probable wishes or preferences of the donor. This prerogative was exercised by the chancellor as keeper of the king's conscience. Since, therefore, in dealing with charities the chancellor exercised both func-

[1] POMEROY, EQ. JUR., § 1027.
[2] Attorney-General *v.* Whitely, 11 Ves. Jr. 241.
[3] Teele *v.* Bishop of Derry, 168 Mass. 341, 47 N. E. 422, 60 Am. St. Rep. 401, 38 L. R. A. 629; Easterbrooks *v.* Dellinghart, 5 Gray (Mass.) 17.
[4] Minot *v.* Baker, 147 Mass. 348, 17 N. E. 839, 9 Am. St. Rep. 713; Nichols *v.* Newark Hospital (N. J.), 63 Atl. 621.
[5] See Gilman *v.* Hamilton, 16 Ill. 225; 2 PERRY, TRUSTS, § 727.

tions, the distinction between what was done under the prerogative power and what under the judicial power was not preserved. Both functions were classed as the judicial administration of the *cy pres* doctrine, and the consequence was that, nominally under the doctrine of *cy pres,* charitable gifts were applied by the courts of chancery to objects as foreign to the intent and wishes of the donor as could well be imagined.[6]

But the courts of this country have very properly refused to exercise this prerogative power.[7] The function of our courts is merely a judicial one, and in dealing with charitable gifts their duty is to carry out strictly the intention of the donor; and this obligation exists in the application of the *cy pres* doctrine as well as elsewhere.[8] Therefore, when the donor manifests no general charitable intent but distinctly confines the trust to some specific purpose named by him, and this purpose cannot be carried out, or the charities provided for cease to exist, or fail for any reason, then the trust wholly fails, and there is no room for applying the *cy pres* doctrine.[9] But where the donor indicates a general charitable intent and designates the general purposes for which his gift was intended, even though he names the objects of his bounty in the first instance, should these particular objects fail, the courts will determine upon some scheme to execute his general intent, by selecting objects similar to and in accord with those mentioned. Thus, in the recent case of *Richards* v. *Wilson* (Ind.), 112 N. E. 780, funds were subscribed to trustees for the purpose of purchasing a certain site for a public school. After such subscriptions were made, the original plans of executing the trust proved impracticable. The court held that a general charitable intent was manifested on the part of the donors; and therefore the doctrine of *cy pres* was applicable, and the trust funds could be administered under plans dissimilar in form though similar in nature to those originally contemplated, and that the original subscribers were bound by the newly adopted plan.

In the application of the doctrine, some courts draw a distinction between those cases where the original plans of executing the trust fail during the lifetime of the donor and those where they fail after his death. These argue that the doctrine does not apply to gifts *inter vivos;* but is limited to testamentary dispositions, and where the plans for administering the trust prove impracticable within the lifetime of the donor, the courts cannot apply the doctrine of *cy pres,* but must submit the matter to the donor for other disposition.[10] The reason assigned for this is that if a donor be living,

[6] Da Costa *v.* De Pas, Amb. 228.

[7] Jackson *v.* Phillips, 14 Allen (Mass.) 539; Curling *v.* Curling, 8 Dana. (Ky.) 38, 33 Am. Dec. 475.

[8] See City of Philadelphia *v.* Heirs of Gerard, 45 Pa. St. 1.

[9] Easterbrooks *v.* Tillinghart, *supra;* Broadbent *v.* Barron, L. R. 29 Ch. D. 560.

[10] See Jenkins *v.* Jenkins University, 17 Wash. 160, 50 Pac. 785; Richards *v.* Wilson (Ind.), 112 N. E. 780, dissenting opinion.

and has not sufficiently provided recipients for his gift, or his gift has for any reason failed, he is more capable than the court of selecting other objects of his beneficence. While this reasoning sounds logical, it loses sight of the principle that the *cy pres* application is in supposed furtherance of the donor's original intention as set forth in the instrument before the court. The intention of the donor of a trust—as of the grantor in a deed or any other instrument—is to be ascertained by the terms of the instrument itself, regardless of the question whether the grantor be living or dead. The intention becomes fixed immediately upon the execution of the instrument. If at that moment, a general charitable intent appear, expressly or by construction, then nothing remains to the donor in the way of title or control, present or future; there is no possibility of a resulting trust; and the fund is irrevocably dedicated to charitable purposes—primarily for the uses designated, and secondarily for such other purposes as the court, under the principles of *cy pres,* may decide upon. On the other hand, if, on a proper construction of the trust instrument, no general charitable intent appears, then there is no such irrevocable dedication, but, on failure of the designated purposes, the trust results to the donor or his estate. It follows, therefore, that on the inquiry whether the *cy pres* principle be applicable in the case of a particular trust, or whether *per contra* there is a resulting trust to the donor, the question is precisely the same whether the donor be living or dead. In other words, there is no such rule that one construction may be given to an instrument during the lifetime of the maker, and a different construction after his death. It is conceded that the doctrine of *cy pres* can be properly applied after the death of the donor, and there seems no good reason for applying a different rule during his lifetime. And this view is supported by the weight of authority.[11]

Again, it must be noted that those courts of this country which recognize the doctrine will not apply it to all trusts. For the doctrine to be applied, the intention of the donor to benefit charities must have been general in its nature; but this alone is not sufficient. There must be some course indicated which will guide the courts in executing the trusts *cy pres.* As was shown above, the American courts have refused to assume the prerogative power exercised by the English courts, and the consummation of the testator's general intent is the sole reason for applying the doctrine. If, therefore, the gift is broadly "for charities" and no more specific purpose whatever is indicated by the donor, or if that which is expressed is so vague and obscure that no inference can be drawn therefrom, the gift is void for uncertainty, and the courts cannot give effect to the trust; because there is nothing to guide them in applying the *cy pres* doctrine.[12]

Many of our American courts have declined to accept the pe-

[11] Richards *v.* Wilson, *supra;* Russell *v.* Allen, 107 U. S. 163.
[12] Le Fontain *v.* Ravenel, 17 How. 369.

culiar doctrine of *cy pres;* and some of the courts which apply it at present do so only as a result of express statutory authority. The doctrine, however, is accepted or rejected by the courts accordingly as they favor or disfavor charitable trusts in general. Most of our courts have always handled charitable trusts with an air of suspicion, due primarily to those causes which produced the English Statute of Mortmain. Since the *cy pres* doctrine is a very liberal rule for the administration of charitable trusts, it would naturally meet with even more disfavor than the trusts themselves.

With regard to the extent to which the *cy pres* doctrine has been adopted, and the scope of its application in the American courts, there is the utmost conflict. It seems possible, however, without attempting any strict comparison of the cases or any minute classification of the rules, to arrange the different states into two general classes which indicate with reasonable accuracy and certainty the existing condition of the law on the *cy pres* doctrine in this country. The states in the first class, due to a general policy of the courts to disfavor charitable trusts, have refused to administer the funds *cy pres,* as a regular judicial function of equity, on the ground that to do so would be inconsistent with our institutions and modes of administration. According to these authorities, unless the donor specifically designates his intention, and the consummation of such designated intention can be duly effected, the trust fails, and the funds will revert to the donor's estate.[13] The states in the second class have accepted the doctrine very generally, either as a judicial function of equity or from statutory authority; although they do not apply it so fully and under such extreme circumstances as would be done by the English courts. The general system seems, at least, to be so far adopted that when an intention to give property to charitable uses generally is clearly manifested—but the particular disposition is uncertain, or the original objects or modes of administration prove impracticable—the trust will nevertheless stand, and the funds will be applied *cy pres.*[14]

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[13] See Universalist Convention of Alabama *v.* May, 147 Ala. 455, 41 South. 515; White *v.* Fisk, 22 Conn. 31; Doughten *v.* Vandiver, 5 Del. Ch. 51; Curling *v.* Curling (Ky.), *supra;* Thompson's Ex'rs *v.* Brown, 24 Ky. L. Rep. 1066, 70 S. W. 674; Le Page *v.* McNamora, 5 Iowa 123; Mount *v.* Tuttle 183 N. Y. 358, 76 N. E. 873, 2 L. R. A. (N. S.) 428; Holland *v.* Alcock, 108 N. Y. 312, 2 Am. St. Rep. 420; McCauley *v.* Wilson, 1 Dev. Eq. (N. C.) 276, 18 Am. Dec. 587; Pringle *v.* Dorsey, 3 Rich. N. S. (S. C.) 502; Galligo *v.* Attorney General, 3 Leigh, (Va.) 450, 24 Am. Dec. 650; Carpenter *v.* Miller's Ex'r, 3 W. Va. 174, 100 Am. Dec. 744; McHugh *v.* McCole, 95 Wis. 166, 72 N. W. 631; Methodist Church *v.* Remington, 1 Watts (Penn.), 218, 26 Am. Dec. 61.

[14] See In re Hickley, 58 Cal. 457; Ga. Code § 4007; Ford *v.* Thompson, 111 Ga. 493, 36 S. E. 841; Adams *v.* Bass, 18 Ga. 130 (doctrine before passage of statute); Richards *v.* Wilson (Ind.), *supra;* Henry County *v.* Winnibargo, etc., Co., 52 Ill. 454; Gillman *v.* Hamilton (Ill.), *supra;* Codman *v.* Brigham, 187 Mass. 309, 72 N. E. 1008, 105 Am. St. Rep. 394; Lackland *v.* Walker, 151 Mo. 210, 52 S. W. 414; MacKinzie *v.* Trustees, 67 N. J. Eq. 652, 3 L. R. A. (N. S.) 227; Zansville Canal, etc., Co. *v.* City, 20 Ohio 483; Pickham *v.* Newton, 15 R. I. 321; Inglish *v.* Johnson, 42 Tex. Civ. App. 118, 95 S. W. 558.

The true doctrine of *cy pres* must not be confounded, as is sometimes done, with the more general principles which lead courts of equity to sustain and enforce charitable gifts, where the trustee or beneficiaries are simply *uncertain*. There is a clear distinction between them, though the doctrine of *cy pres* may be to some extent an expansion or enlargement of the other principle. A review of the authorities shows that some cases in which the courts have professedly relied on the doctrine of *cy pres* and which are cited as illustrations of its application seem to be nothing more than instances in which trusts with uncertain trustees or objects have been sustained. On the other hand, those courts which have utterly rejected the doctrine refuse to allow a trust to fail for want of a trustee or for failure of the trustee designated by the donor. This shows, therefore, that the latter class of courts could accept the doctrine of *cy pres* and apply it as a part of the regular jurisdiction of equity without making a radical departure from their present holding, and without throwing themselves out of line with our general principles of administering trusts.

PRIORITY BETWEEN COURTS OF CONCURRENT JURISDICTION.—It is essential to the orderly administration of justice, and to prevent unseemly conflicts between courts whose jurisdictions embrace the same subjects and persons, that some well defined rules should exist regarding the priority of one such court over another. The rules determining the priority between courts of concurrent jurisdiction seem, for the most part, to be very well settled; but the question is frequently presented, and becomes of especial importance as between the courts of the United States and those of the several states.

There are two classes of cases in which the question of priority of jurisdiction as between co-ordinate courts becomes important. The first class consists of those cases in which the actual or constructive possession of property by one court is interfered with by the officers of another court of concurrent jurisdiction. The second class is composed of those cases in which there is no interference with the possession of a court, but an interference with the jurisdiction of that court by another co-ordinate court assuming control over property the possession of which may become necessary to the exercise of the first court's jurisdiction in the progress of the cause pending before it.

The rules governing the first class of cases seem to be well settled. Where a court of competent jurisdiction has, by appropriate proceedings, taken property into its possession through its officers, the property is thereby withdrawn from the jurisdiction of all other co-ordinate courts. Any other court of concurrent jurisdiction is without power to render any judgment concerning, or to disturb in any manner, the title, possession, or control of the property. A court, during the continuance of its possession of the property, as incident thereto and as ancillary to the suit in which the possession